Filed 3/30/05 Cohen v. Tifaeret-Teman CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MEIR COHEN et al., Plaintiffs and Respondents, v. TIFAERET-TEMAN CORPORATION, Defendant and Appellant.	B173154 (Los Angeles County Super. Ct. No. BS085565)

APPEAL from an order of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Simkin & Associates and Michael J. Simkin for Defendant and Appellant.

Schreiber & Schreiber, Inc., Edwin C. Schreiber and Eric A. Schreiber for Plaintiffs and Respondents.

Tifaeret-Teman Corporation (the synagogue) appeals the trial court's order compelling it to hold a special meeting to elect a new board of directors pursuant to its bylaws. We find no error, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The synagogue is located in Los Angeles. According to an amendment to its articles of incorporation: "This organization is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code."

The synagogue is governed by bylaws.[1] With respect to who qualifies as a member of the synagogue, section 3.01 of the bylaws explains that "[a]ny person may become an active member of this Synagogue who has attained the age of eighteen (18) years, has signed the Synagogue register, is in sympathy with the purpose of this Synagogue, and has indicated an interest in furthering its program."

In section 4.01, the bylaws require annual meetings for the election for directors and the transaction of other business. Further, notice of these meetings "shall be mailed to each member . . . at least 10 days prior to the meeting." The bylaws also provide for special meetings. "Special meetings of members may be called at any time by the Board of Directors, and shall be called on the written petition of not less than ten (10) percent or more of the voting members filed with the Board of Directors."

Respondents' Petition for an Annual or Special Meeting and the First Hearing

On July 31, 2003, a letter was sent on behalf of certain members of the synagogue to the board of directors of the synagogue to request a special meeting of members. Attached to the letter was a petition signed by more than 10 percent of the synagogue's members asking that a special meeting be set to remove the entire existing board of directors and elect a new board of directors.

---

[1] In our discussion below, we address the validity of the alleged amendment to the bylaws that purports to add to the membership requirement an annual fee of $1,000.

That request apparently was denied because on September 8, 2003, two members of the synagogue, respondents Meir Cohen and Jacob Yonaty filed a verified petition for an order directing nonprofit corporation to hold annual and or special meeting and to elect directors. In support thereof, respondents filed a memorandum of points and authorities arguing why an annual or a special meeting must be ordered. A hearing was set for October 7, 2003.

The synagogue opposed the petition, contending that (1) respondents failed to present evidence showing that they had standing to bring the lawsuit as members of the synagogue, (2) respondents neglected to provide evidence demonstrating that the signatories on the petition are members of the synagogue, and (3) the petition is moot because an annual meeting and election of the board of directors was held just two months earlier in July 2003.

At the hearing on respondents' petition, the trial court commented that there was "nothing here that would in any way enable me to conclude that a proper[], valid meeting on proper notice ha[d] been held." Accordingly, the trial court continued the hearing to allow the parties to submit supplemental papers that established that there had been "an appropriately noticed" meeting.

Supplemental Briefs and Second Hearing on Respondents' Petition

In accordance with the trial court's instructions, the synagogue filed a supplemental opposition addressing the annual meeting that allegedly had occurred in July 2003 and synagogue membership requirements. In support thereof, the synagogue submitted a declaration from Uri Boaz (Boaz), the president and chief executive officer of the synagogue. He declared that a properly noticed annual meeting and election had been held on July 24, 2003. Attached to his declaration was a form letter advising members of the meeting date and time, a sample proxy form, and a copy of the minutes from that meeting.

With respect to membership, Boaz attested that the synagogue bylaws required an annual monetary donation. Attached to his declaration was a copy of a Hebrew document that, according to Boaz's statement, reflected a January 19, 1995, amendment

to the bylaws requiring an annual payment of $1,000, which could be reduced for those who could not afford it.

In response to the supplemental opposition, respondents objected to the Hebrew document on the grounds that it was not certified or translated. They also filed declarations from synagogue members who attested that they (1) were never given notice of the July 2003 meeting (or any meetings prior to 2000), and (2) were never advised that they were required to make a donation in a specific amount or pay membership dues in order to be considered a member of the synagogue.

The day before the continued hearing date, the synagogue filed a "translation of 1995 amendment to the bylaws (Exhibit "C") to supplemental opposition." No declaration from a translator was attached thereto.

At the hearing, the trial court granted respondents' petition to order an annual or special meeting of the synagogue. With respect to the synagogue's evidence that a properly-noticed meeting had occurred in July 2003, the trial court found the evidence "extremely meager." Specifically, the trial court saw no evidence (1) as to whom notice of the meeting was sent, (2) that 50 percent of the voting members were present to form a quorum, or (3) that two-thirds of those that were present at the meeting actually voted, as required by the synagogue's bylaws.

With respect to membership requirements, the trial court noted that it was "a little odd" that the minutes reflected a purported change to the membership requirements, adding a minimum membership fee of $1,000, when the synagogue was simultaneously claiming that such an amendment had already been approved in 1995, as allegedly set forth in the Hebrew document.

After indicating its intention to grant respondents' application, the next issue was whether the trial court should order a general or special meeting. Recognizing that there likely was "going to be a major dispute" regarding who was entitled to notice of the hearing, the trial court continued the hearing again to (1) allow the parties to file supplemental papers regarding the July 2003 election and membership requirements, and

(2) provide the parties with time to attempt to mediate their dispute. The trial court then ordered the synagogue to bear the cost of mediation.

Supplemental Papers and the Third Hearing

Following the trial court's order, the parties again submitted supplemental papers to the trial court. Respondents submitted numerous declarations, grouped into two categories: (1) three declarations from synagogue members who received vague oral notice of the July 24, 2003, meeting and election; and (2) numerous declarations from synagogue members who never received any notice of the July 24, 2003, meeting and election. The synagogue submitted declarations from persons who declared that they knew of the 1995 amendment to the bylaws (adding the monetary donation requirement), that they received notice of the July 24, 2003, meeting, and that a quorum was present at that meeting.

On December 9, 2003, the synagogue filed a "declaration by qualified translator of the Hebrew translation of the 1995 amendment to the bylaws." The translation was prepared by, and the declaration signed by, Danit Almany, assistant to the synagogue's counsel. Ms. Almany declared that she is fluent in Hebrew and English and that the English translation is an accurate translation of the Hebrew document.

At the December 11, 2003, hearing, the trial court sustained the objection to the translation of the Hebrew document on the grounds that it was not prepared by a qualified, certified translator. Thereafter, the trial court found that appropriate notice of the July 2003 meeting was not given to all synagogue members as required by the synagogue's bylaws. In that regard, there was no credible evidence upon which the trial court could conclude that a valid change in the bylaws occurred in 1995; therefore, membership was determined by the original synagogue bylaws. Furthermore, in light of the synagogue's position regarding membership, the trial court found that it would be impractical and unduly difficult to hold a meeting absent a court order.

Accordingly, the trial court ordered the synagogue to hold a special meeting to elect a new board of directors. It then ordered that a referee be appointed to supervise the special election, including a determination as to who is a member entitled to notice of the

special meeting and entitled to vote in the election. The trial court reiterated that the original bylaws governed the special election and that the referee could not consider the 1995 amendment purportedly adding a financial component to membership. Last, the trial court ordered the synagogue to bear the costs of the referee, subject to reallocation of a portion or all of the costs, if appropriate.

The parties thereafter submitted lists of proposed referees. While respondents proposed three individuals, the synagogue suggested that the National Council of Young Israel act as referee. Ultimately, the trial court appointed Jacob Reich, one of respondents' nominees, to serve as referee.

On February 6, 2004, the synagogue filed the instant appeal, challenging the trial court's order compelling a special election and subsequent order appointing Mr. Reich as referee.

DISCUSSION

A. Corporations Code Section 5510[2] Governs

The synagogue complains that the trial court erred in finding that it is a nonprofit corporation organized for religious purposes as opposed to deeming it a religious corporation. This argument, as the synagogue concedes in its opening brief, is irrelevant. As discussed below, one of the synagogue's primary contentions is that the trial court erred in ordering a special meeting because respondents did not establish that it was "impractical or unduly difficult" for the synagogue to hold such a meeting. That requirement exists in both section 5515, subdivision (a),[3] and section 9414, subdivision

---

[2] All further statutory references are to the Corporations Code unless otherwise indicated.

[3] Section 5515, subdivision (a) provides: "If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles or bylaws, or this part, then the superior court of the proper county, upon petition of a director, officer, delegate, member or the Attorney General, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members,

(a).[4] Thus, regardless of whether the synagogue is considered a nonprofit corporation or a nonprofit religious corporation, respondents were required to demonstrate that it was "impractical or unduly difficult" for the synagogue to conduct a meeting.

Aside from being irrelevant, this argument is not well-taken. In order to qualify as a religious corporation, as mandated by section 9130, subdivision (b), the entity's articles of incorporation must include the following language: "This corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law (primarily or exclusively [insert one or both]) for religious purposes." The synagogue's articles of incorporation do not contain this requisite language. Accordingly, it is considered a nonprofit corporation, governed by division 2 of title 1 of the Corporations Code (nonprofit corporation law), as opposed to part 4 of division 2 of title 1 of the Corporations Code (nonprofit religious corporations).

B. The Trial Court Properly Found that It Would Be Impractical or Unduly Difficult to Hold a Meeting Absent a Court Order

Applying section 5515, subdivision (a), the trial court properly concluded that it would be impractical or unduly difficult for the synagogue to hold a special meeting and election absent a court order. The evidence establishes that the meeting that purportedly occurred on July 24, 2003, was not properly noticed. Specifically, respondents filed numerous declarations from synagogue members who either received vague oral notice of the meeting and election or no notice whatsoever. Moreover, the synagogue continued

---

delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances."

[4] Section 9414, subdivision (a) provides: "If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles or bylaws, or this part, then the superior court of the proper county, upon petition of a director, officer, delegate, or member, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances."

to insist that an annual $1,000 donation was required in order to be a voting synagogue member. Given the evidence that an annual meeting had not been held in years, under these circumstances, the trial court appropriately found that it would be "impractical or unduly difficult" for the synagogue to hold a meeting without a court order compelling it to do so. (§ 5515, subd. (a).)

C. The Trial Court Did Not Err in Striking the Purported 1995 Amendment to the Bylaws and Ordering that a Special Election Occur Pursuant to the Original Bylaws

The parties dispute whether the original bylaws were amended in 1995 to require persons to contribute an annual payment of $1,000 in order to be deemed members of the synagogue. In support of its position, the synagogue submitted a Hebrew document to the trial court that supposedly reflected the change to its bylaws. After a couple of hearings and opportunities to file a proper translation of the document, the trial court struck the purported translation pursuant to California Rules of Court, rule 311, thereby striking the alleged amendment as well. In so doing, the trial court did not err.

California Rules of Court, rule 311(e) provides, in relevant part: "Exhibits written in a foreign language shall be accompanied by an English translation, certified under oath by a qualified interpreter." The rules governing qualified interpreters are set forth in Government Code sections 68560 through 68566. Because Hebrew is a nondesignated language, Government Code section 68561, subdivision (d) applies. That statute provides, in relevant part: "Any person who interprets in a court proceeding using a language not designated by the Judicial Council shall be qualified by the court under the qualification procedures and guidelines adopted by the Judicial Council." Those guidelines are set forth in part in California Rules of Court, rule 984.4. Quite simply, Ms. Almany did not establish in her supporting declaration that she is qualified "under the qualification procedures and guidelines adopted by the Judicial Council" nor did she declare that she satisfied the requirements of California Rules of Court, rule 984.4. Accordingly, the trial court did not err in striking her translation of the purported 1995 amendment to the synagogue's bylaws.

Absent that amendment, the original bylaws govern synagogue membership. Section 3.01 of the bylaws provides that "[a]ny person may become an active member of this Synagogue who has attained the age of eighteen (18) years, has signed the Synagogue register, is in sympathy with the purpose of this Synagogue, and has indicated an interest in furthering its program." The trial court properly concluded that members who satisfy these requirements are entitled to notice of the court-ordered special meeting and are permitted to vote.

D. The Trial Court Did Not Abuse Its Discretion in Appointing a Referee to Supervise the Election

Preliminarily, we note that the synagogue did not object to the trial court's order that a referee be appointed to supervise the special election, thereby forfeiting that objection on appeal. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

Regardless, given the deep nature of the parties' discord, the trial court did not abuse its discretion in appointing a referee to supervise the election. As evidenced by the appellate record, the parties strongly disagree as to who may participate in the synagogue's business, primarily who may vote at the court-ordered election. By appointing a referee, the trial court has given the synagogue and its members a mediator to determine who may attend the meeting and who may vote, thereby avoiding future litigation and resolving this issue expeditiously.

Moreover, in appointing a referee to supervise the special meeting and election, the trial court did not abdicate any of its responsibilities. Rather, after considering hosts of briefs, supplemental briefs, and evidence, it made proper legal determinations regarding the scope of the synagogue's bylaws and then appointed a referee to ensure that all synagogue members entitled to notice and to vote were given those opportunities.

It follows that we are not persuaded by the synagogue's contention that the trial court erred in not allowing the appointed referee to consider the 1995 purported amendment to the bylaws. Pursuant to section 5515, subdivision (a), the trial court had the authority to order that a special meeting and election occur "in such a manner as the court finds fair and equitable under the circumstances." In accordance therewith, the trial

court determined what the synagogue's bylaws entailed. Relying upon admissible evidence and the synagogue's bylaws, it outlined the framework for the election and then simply appointed a referee to determine which persons qualified as members of the synagogue for voting purposes and thus were entitled to notice.

Furthermore, the synagogue has not established that the referee is unqualified or overly expensive. Rather, as the trial court found, Mr. Reich's resume establishes that he has extensive experience in civil litigation and knowledge of Jewish customs, including familiarity with how Jewish synagogues function in Los Angeles. With respect to his hourly rate of $200, this amount is not unreasonable, particularly given the fact that the synagogue owns property worth hundreds of thousands of dollars. It follows that the trial court did not err in ordering the synagogue to pay the referee's fees, at least initially. As the trial court specifically ordered, payment of the fees may be reallocated if appropriate.

E. Ample Evidence Demonstrates that Respondents had Standing to Bring their Petition to Compel a Meeting

The synagogue complains that respondents lacked standing to bring their petition. The evidence dictates otherwise. Both respondents verified the petition for an order to hold an annual or special meeting and to hold an election. In so doing, they attested that they were members in good standing of the synagogue. Pursuant to section 5515, subdivision (a), nothing else was required.

Whether respondents demonstrated that 10 percent of synagogue members signed the original petition to the board of directors to hold a special meeting is a red herring. Applying section 5515, subdivision (a), the trial court determined that it was impractical or unduly difficult for the synagogue to hold a meeting as set forth in its bylaws and thus, "upon petition of a . . . member . . . order[ed] that such a meeting be called." While the synagogue's bylaws require that a special meeting be called on the written petition of 10 percent of the membership, once that effort failed, California's Corporations Code dictated how to compel the synagogue to hold such a meeting.

F. The Trial Court Did Not Err by Refusing to Hold a Trial on the Merits

Finally, the trial court did not err by refusing to hold a trial on the merits. California Rules of Court, rule 323(a) provides: "Evidence received at a law and motion hearing must be by declaration, affidavit, or request for judicial notice without testimony or cross-examination, except as allowed in the court's discretion for good cause shown." Quite simply, the synagogue has not demonstrated good cause for presenting live testimony. Other than challenging, again, the trial court's order striking the improper translation of the purported amendment to the bylaws, the synagogue fails to explain how live testimony would have revealed facts that could not otherwise have been set forth in the numerous declarations filed with the trial court.

Moreover, California Rules of Court, rule 323(b) sets forth strict procedural constraints on a request for live testimony: "A party seeking permission to introduce oral evidence . . . must file, no later than three court days before the hearing, a written statement stating the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing." Having failed to comply with these requirements, the synagogue was not entitled to a live hearing on respondents' petition.

Schraer v. Berkeley Property Owners' Assn. (1989) 207 Cal.App.3d 719, cited by the synagogue, is readily distinguishable. At issue in that case was the harassment statute, Code of Civil Procedure section 527.6. The Court of Appeal concluded that Code of Civil Procedure section 527.6 "must be interpreted as setting forth a procedure for what is in effect a highly expedited lawsuit on the issue of harassment." (*Schraer*, *supra*, at p. 732.) That statute and its special procedure are not at issue in the present controversy; nor is there any indication that sections 5510 and 5515 should be construed in such a manner.

DISPOSITION

The order of the trial court is affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD